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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78005; File No. SR-BATS-2015-100)

June 7, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 5 to Proposed Rule Change, as Modified by Amendments Nos. 1, 3, and 4 thereto, to Amend Rule 14.11(i) to Adopt Generic Listing Standards for Managed Fund Shares

I. Introduction

On November 18, 2015, BATS Exchange, Inc. (now known as Bats BZX Exchange, Inc., “Exchange” or “BZX”)<sup>1</sup> filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend Rule 14.11(i) by, among other things, adopting generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the Federal Register on November 25, 2015.<sup>4</sup> On January 4, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On February 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule

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<sup>1</sup> In March 2016, BATS changed its name from “BATS Exchange, Inc.” to “Bats BZX Exchange, Inc.” See Securities Act Release No. 77307 (Mar. 7, 2016), 81 FR 12996 (Mar. 11, 2016) (SR-BATS-2016-25) (publishing notice of the name change to Bats BZX Exchange, Inc.).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 76478 (Nov. 19, 2015), 80 FR 73841 (“Notice”).

<sup>5</sup> See Securities Exchange Act Release No. 76820, 81 FR 989 (Jan. 8, 2016). The Commission designated February 23, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. See id.

change,<sup>6</sup> which replaced the originally filed proposed rule change in its entirety.<sup>7</sup> On February 11, 2016, the Exchange both filed and withdrew Amendment No. 2 to the proposed rule change. On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>8</sup> On February 17, 2016, the Exchange filed Amendment No. 4 to the proposed rule change.<sup>9</sup> On February 22, 2016, the Commission issued notice of filing of Amendment Nos. 1, 3, and 4 to the

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<sup>6</sup> Amendment No. 1: (1) clarifies the proposed treatment of convertible securities under the proposed generic listing criteria; (2) modifies the proposed criterion regarding American Depositary Receipts (“ADRs”) to provide that no more than 10% of the equity weight of the portfolio shall consist of non-exchange traded (rather than unsponsored) ADRs; (3) modifies the proposed portfolio limit on listed derivatives to require that at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement (“CSSA”); (4) provides that a portfolio’s investments in listed and over-the-counter derivatives will be calculated for purposes the proposed limits on such holdings as the total absolute notional value of the derivatives; (5) makes certain other conforming and clarifying changes. The amendments to the proposed rule change are available at: <http://www.sec.gov/comments/sr-bats-2015-100/bats2015100.shtml>.

<sup>7</sup> See Amendment No. 1, supra note 6, at 4.

<sup>8</sup> Amendment No. 3 deletes from the proposal the following two sentences: (1) “Such limitation will not apply to listed swaps because swaps are listed on swap execution facilities (“SEFs”), the majority of which are not members of ISG.” and (2) “Such limitation would not apply to listed swaps because swaps are listed on SEFs, the majority of which are not members of ISG.” Amendment No. 3 also corrects an erroneous statement in Item 11 to indicate that an Exhibit 4 was included in Amendment No. 1.

<sup>9</sup> Amendment No. 4 deletes from the proposal the following sentence: “Thus, if the limitation applied to swaps, there would effectively be a cap of 10% of the portfolio invested in listed swaps.” Amendment No. 4 also amends two representations as follows (added language in brackets): The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares [and their underlying components] with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded[, or with which the Exchange has in place a CSSA.] In addition, the Exchange or FINRA[, on behalf of the Exchange[, may obtain information regarding trading in Managed Fund Shares [and their underlying components] from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.”

proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act<sup>10</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto.<sup>11</sup> In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.<sup>12</sup> On May 20, 2016, the Commission designated a longer period for Commission action on the proposed rule change.<sup>13</sup> The Commission has not received any comments on the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto.

Pursuant to Section 19(b)(1) of the Act<sup>14</sup> and Rule 19b-4 thereunder,<sup>15</sup> notice is hereby given that, on June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change,<sup>16</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> See Securities Exchange Act Release No. 77202, 81 FR 9889 (Feb. 26, 2016) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” See id., 81 FR at 9897.

<sup>12</sup> See id.

<sup>13</sup> See Securities Exchange Act Release No. 77871, 81 FR 33567 (May 26, 2016) (designating July 22, 2016 as the date by which the Commission must either approve or disapprove the proposed rule change).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> 17 CFR 240.19b-4.

<sup>16</sup> Amendment No. 5: (1) clarifies the context of “system failures” in the definition of Normal Market Conditions; (2) clarifies the scope of “equity” securities to also include U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products, and Linked Securities listed pursuant to equivalent rules of another national securities exchange; (3) clarifies the exclusion of U.S. Department of Treasury securities and government-sponsored entity securities from the minimum diversification requirements applicable to fixed income securities; (4) provides that the calculation for complying with the percentage limitations with respect to listed derivatives and OTC derivatives (as defined herein) will be based on aggregate gross notional values of the derivatives; (5) provides additional minimum diversification requirements with respect to listed derivatives, to be calculated based on aggregate gross notional values, including gross

which replaced the originally filed proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 5 thereto, is as described in Items II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5 thereto, from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to adopt generic listing standards for shares listed under BZX Rule 14.11(i) ("Managed Fund Shares").

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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notional exposures; (6) clarifies that, to the extent that listed or OTC derivatives (as defined herein) are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure is required to meet the criteria set forth in Rule 14.11(i)(4)(C)(i) and (ii) (including gross notional exposures), respectively; (7) provides examples on how the percentage limitations applicable to listed and OTC derivatives (as defined herein) would be calculated; and (8) confirms that (a) an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements, and (b) if the series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures.

Item V below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 5 to SR-BATS-2015-100 amends and replaces in its entirety Amendment No. 1 to the proposal (and subsequent amendments thereto), which was filed on February 10, 2016, which amended and replaced in its entirety the proposal as originally submitted on November 15, 2015. The Exchange submits this Amendment No. 5 in order to clarify certain points about the proposal, to describe more accurately how investments in derivative securities will be treated, and provide an example of how portfolio exposure will be calculated.

The Exchange proposes to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission ("SEC" or "Commission") for the listing and trading of each new series of Managed Fund Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 14.11(i) that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process. Prior to listing pursuant to proposed amended Rule 14.11(i), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the

applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

### Background

Rule 14.11(i) sets forth certain rules related to the listing and trading of Managed Fund Shares.<sup>17</sup> Under Rule 14.11(i)(3)(A), the term “Managed Fund Share” means a security that:

- (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser (hereafter “Adviser”) consistent with the Investment Company’s investment objectives and policies;
- (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and
- (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Effectively, Managed Fund Shares are securities issued by an actively-managed open-end Investment Company (i.e., an exchange-traded fund (“ETF”) that is actively managed). Because Managed Fund Shares are actively-managed, they do not seek to replicate the performance of a

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<sup>17</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018) (Order Approving Proposed Rule Change to Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange) (the “Approval Order”). The Approval Order approved the rules permitting the listing of both Tier I and Tier II securities on the Exchange and the requirements associated therewith, which includes the listing and trading of Index Fund Shares and Managed Fund Shares, trading hours and halts, and listing fees originally applicable to Managed Fund Shares.

specified passive index of securities. Instead, they generally use an active investment strategy to seek to meet their investment objectives. In contrast, an open-end Investment Company that issues Index Fund Shares, listed and traded on the Exchange pursuant to Rule 14.11(c), seeks to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

All Managed Fund Shares listed pursuant to Rule 14.11(i) are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange and, as such, are subject to the full panoply of Exchange rules and procedures that currently govern the trading of securities on the Exchange.<sup>18</sup>

In addition, Rule 14.11(i) currently provides for the criteria that Managed Fund Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Fund Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Fund Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Rule 14.11(i)(2)(A) specifies that the Exchange will file separate proposals under Section 19(b) of the Act (hereafter, a “proposed rule change”) before the listing of Managed Fund Shares, which, in conjunction with the proposal to create generic listing standards for Managed Fund Shares, the Exchange is proposing to delete.

#### Proposed Changes to Rule 14.11(i)

The Exchange is proposing to amend Rule 14.11(i) to specify that the Exchange may approve Managed Fund Shares for listing pursuant to SEC Rule 19b-4(e) under the Act, which

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<sup>18</sup> See Rule 14.11(i)(2).

pertains to derivative securities products (“SEC Rule 19b-4(e)”).<sup>19</sup> SEC Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>20</sup> if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which “passive” ETFs are listed under Rule 14.11.

The Exchange would also specify within Rule 14.11(i)(4)(C) that components of Managed Fund Shares listed pursuant to SEC Rule 19b-4(e) must satisfy the requirements of Rule 14.11(i) on an initial and continued basis, which includes certain specific criteria that the Exchange is proposing to include within Rule 14.11(i)(4)(C), as described in greater detail below. As proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares with components that do not satisfy the additional criteria described below or components other than those specified below. For example, if the components of a Managed Fund Share exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading such Managed Fund Share. Similarly, if the components of a Managed Fund Share included a security or asset that is not specified below, the Exchange would file a separate proposed rule change.

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<sup>19</sup> 17 CFR 240.19b-4(e). As provided under SEC Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

<sup>20</sup> 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.



The Exchange would also amend the definition of the term “Disclosed Portfolio” under Rule 14.11(i)(3)(B) in order to require that the website for each series of Managed Fund Shares listed on the Exchange disclose the following information regarding the Disclosed Portfolio, to the extent applicable: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.<sup>21</sup>

The Exchange would also add to Rule 14.11(i)(4)(A) by specifying that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.<sup>22</sup>

Finally, the Exchange would also amend the continued listing requirement in Rule 14.11(i)(4)(B) by changing the requirement that an Intraday Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that an Intraday Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours, as defined in Exchange Rule 1.5(w).

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<sup>21</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. See, e.g., Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR-NYSEArca-2013-122) (the “PIMCO Total Return Use of Derivatives Approval”).

<sup>22</sup> The Exchange would also add a new defined term under Rule 14.11(i)(3)(E) to specify that the term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

### Proposed Managed Fund Share Portfolio Standards

The Exchange is proposing standards that would pertain to Managed Fund Shares to qualify for listing and trading pursuant to SEC Rule 19b-4(e). These standards would be grouped according to security or asset type. The Exchange notes that the standards proposed for a Managed Fund Share portfolio that holds equity securities, Derivative Securities Products, and Linked Securities are based in large part on the existing equity security standards applicable to Index Fund Shares in Exchange Rule 14.11(c)(3). The standards proposed for a Managed Fund Share portfolio that holds fixed income securities are based in large part on the existing fixed income security standards applicable to Index Fund Shares in Rule 14.11(c)(4). Many of the standards proposed for other types of holdings in a Managed Fund Share portfolio are based on previous proposed rule changes for specific series of Managed Fund Shares.<sup>23</sup>

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<sup>23</sup> Securities Exchange Act Release Nos. 74193 (February 3, 2015), 80 FR 7066 (February 9, 2015) (SR-BATS-2014-054) (the “iShares Short Maturity Municipal Bond Approval”); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR-BATS-2014-056) (the “iShares U.S. Fixed Income Balanced Risk Approval”); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (the “PIMCO Total Return Approval”); the PIMCO Total Return Use of Derivatives Approval; 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR-NYSEArca-2013-08) (the “SPDR Blackstone/GSO Senior Loan Approval”); 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR-NYSEArca-2012-139) (the “First Trust Preferred Securities and Income Approval”); 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (the “International Bear Approval”); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR-NYSEArca-2010-04) (the “WisdomTree Real Return Approval”); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR-NYSEArca-2012-25) (the “WisdomTree Brazil Bond Approval”). Certain standards proposed herein for Managed Fund Shares are also based on previously proposed rule changes for specific index-based series of Index Fund Shares that did not satisfy the standards for those products on their respective listing exchange and for which Commission approval was required prior to listing and trading. See Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92); 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120); 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR-NYSEArca-2010-94); and 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR-NYSEArca-2012-108) (the “NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval”).

Proposed Rule 14.11(i)(4)(C)(i) would describe the standards for a Managed Fund Share portfolio that holds equity securities, which are defined to be U.S. Component Stocks,<sup>24</sup> Non-U.S. Component Stocks,<sup>25</sup> Derivative Securities Products,<sup>26</sup> and Linked Securities<sup>27</sup> listed on a national securities exchange. For Derivative Securities Products and Linked Securities, no more than 25% of the equity weight of the portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Linked Securities. To the extent that a portfolio includes convertible securities, the equity security into which such security is converted shall meet the criteria of this Rule 14.11(i)(4)(C)(i) after converting.

As proposed in Rule 14.11(i)(4)(C)(i)(a), the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

- (1) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Linked Securities) each must have a minimum market value of at least \$75 million;<sup>28</sup>

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<sup>24</sup> For the purposes of Rule 14.11(i) and this proposal, the term “U.S. Component Stocks” will have the same meaning as defined in Rule 14.11(c)(1)(D).

<sup>25</sup> For the purposes of Rule 14.11(i) and this proposal, the term “Non-U.S. Component Stocks” will have the same meaning as defined in Rule 14.11(c)(1)(E).

<sup>26</sup> For the purposes of Rule 14.11(i) and this proposal, the term “Derivative Securities Products will have the same meaning as defined in Rule 14.11(c)(3)(A)(i)(a) and will include both those Derivative Securities Products listed on the Exchange as well as each of the equivalent security types listed on another national securities exchange.

<sup>27</sup> Linked Securities are securities listed on the Exchange under Rule 14.11(d) and each of the equivalent security types listed on another national securities exchange.

<sup>28</sup> The proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(a), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Linked Securities.

- (2) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Linked Securities) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;<sup>29</sup>
- (3) The most heavily weighted component stock (excluding Derivative Securities Products and Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Linked Securities) must not exceed 65% of the equity weight of the portfolio;<sup>30</sup>
- (4) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there would be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products

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<sup>29</sup> This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(b), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Linked Securities.

<sup>30</sup> This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(c), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Linked Securities.

or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;<sup>31</sup>

- (5) Except as provided in proposed Rule 14.11(i)(4)(C)(i)(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;<sup>32</sup> and
- (6) American Depositary Receipts (“ADRs”) may be exchange traded or non-exchange traded. However no more than 10% of the equity weight of the portfolio shall consist of non-exchange traded ADRs.

As proposed in Rule 14.11(i)(4)(C)(i)(b), the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

- (1) Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million;<sup>33</sup>

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<sup>31</sup> This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(d), except for the omission of the reference to “index,” which is not applicable, the addition of the reference to Linked Securities, the reference to the equity portion of the portfolio not including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the “equity weight” of the portfolio – this last difference is included because the proposed standards in Rule 14.11(i)(4)(C) permit the inclusion of non-equity securities, whereas Rule 14.11(c)(3) applies only to equity securities.

<sup>32</sup> 17 CFR 240.600. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(e), except for the addition of “equity” to make clear that the standard applies to “equity securities” and the omission of the reference to “index,” which is not applicable.

<sup>33</sup> The proposed text is identical to the corresponding representation from the Non-U.S. Components Release, as defined in footnote 24, below. The proposed text is also identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(a), except for the omission of the reference to “index,” which is not applicable, and that each Non-U.S. Component Stock must have a minimum market value of at least \$100 million instead of the 70% required under Rule 14.11(c)(3)(A)(ii)(a).

- (2) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;<sup>34</sup>
- (3) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;<sup>35</sup>
- (4) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;<sup>36</sup> and

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<sup>34</sup> The proposed text is identical to the corresponding representation from the Non-U.S. Components Release, as defined in footnote 24, below. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(b), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Linked Securities.

<sup>35</sup> This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(c), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Linked Securities.

<sup>36</sup> This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(d), except for the omission of the reference to “index,” which is not applicable, the addition of the reference to Linked Securities, the reference to the equity portion of the portfolio including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the “equity weight” of the portfolio – this last difference is included because the proposed standards in Rule 14.11(i)(4)(C) permit the inclusion of non-equity securities, whereas Rule 14.11(c)(3) applies only to equity securities.

- (5) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.<sup>37</sup>

The Exchange notes that, as approved by the Commission for certain Managed Fund Shares<sup>38</sup> and also not required under corresponding Rule 14.11(c)(3)(A)(ii) related to Index Fund Shares,<sup>39</sup> it is not proposing to require that any of the equity portion of the equity portfolio composed of Non-U.S. Component Stocks be listed on markets that are either a member of the Intermarket Surveillance Group (“ISG”) or a market with which the Exchange has a comprehensive surveillance sharing agreement (“CSSA”).<sup>40</sup> However, as further detailed below, the Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded.

Proposed Rule 14.11(i)(4)(C)(ii) would describe the standards for a Managed Fund Share portfolio that holds fixed income securities, which are debt securities<sup>41</sup> that are notes, bonds,

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<sup>37</sup> 17 CFR 240.600. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(e), except for the addition of “equity” to make clear that the standard applies to “equity securities” and the omission of the reference to “index,” which is not applicable.

<sup>38</sup> See Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR-NYSEArca-2014-100) (the “Non-U.S. Components Release”).

<sup>39</sup> Under Rule 14.11(c)(3)(A)(ii), index fund shares with components that include Non-U.S. Component Stocks can hold a portfolio that is entirely composed of Non-U.S. Component Stocks that are listed on markets that are neither members of ISG, nor with which the Exchange has in place a CSSA.

<sup>40</sup> ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. See <https://www.isgportal.org/home.html>.

<sup>41</sup> Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade

debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities,<sup>42</sup> and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted shall meet the criteria of proposed Rule 14.11(i)(4)(C)(ii) after converting. The components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis:

- (1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio shall each have a minimum original principal amount outstanding of \$100 million or more;<sup>43</sup>
- (2) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) shall not in the aggregate account for more than 65% of the fixed income weight of the portfolio;<sup>44</sup>

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securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities.

<sup>42</sup> The Exchange notes that, for purposes of this proposal, the issuer of asset backed securities will be considered the issuer of the underlying debt.

<sup>43</sup> This proposed text of 14.11(i)(4)(C)(ii)(a)(1) is based on the corresponding text of 14.11(c)(4)(B)(i)(b).

<sup>44</sup> This proposed rule text is identical to the corresponding text of Rule 14.11(c)(4)(B)(i)(d), except for the omission of the reference to “index,” which is not applicable, and the



- (3) An underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Rule 14.11(i)(4)(C)(i);<sup>45</sup>
- (4) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and
- (5) Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

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exclusion of “GSE Securities,” which is consistent with the corresponding text of NYSE Arca, Inc. (“Arca”) Commentary .02(a)(4) to Rule 5.2(j)(3).

<sup>45</sup>

This proposed text is similar to the corresponding text of Rule 14.11(c)(4)(B)(i)(e), except for the omission of the reference to “index,” which is not applicable and the provision that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Rule 14.11(i)(4)(C)(i).

Proposed Rule 14.11(i)(4)(C)(iii) describes the standards for a Managed Fund Share portfolio that holds cash and cash equivalents.<sup>46</sup> Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months. There would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments would include the following:<sup>47</sup> (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes; and (7) money market funds.

Proposed Rule 14.11(i)(4)(C)(iv) describes the standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.<sup>48</sup> There would be no limitation to the percentage of the

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<sup>46</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include cash and cash equivalents. See, e.g., iShares U.S. Fixed Income Balanced Risk Approval at 9789, SPDR Blackstone/GSO Senior Loan Approval at 19768-69, and First Trust Preferred Securities and Income Approval at 76150.

<sup>47</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly specified short-term instruments with respect to their inclusion in Managed Fund Share holdings. See, e.g., First Trust Preferred Securities and Income Approval at 76150-51.

<sup>48</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include listed

portfolio invested in such holdings; provided, however, that, in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a CSSA, calculated using the aggregate gross notional value of such holdings.<sup>49</sup> In addition, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). The Exchange notes that, for purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the gross notional value of the listed derivatives.

Proposed Rule 14.11(i)(4)(C)(v) describes the standards for a Managed Fund Share portfolio that holds over the counter ("OTC") derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.<sup>50</sup> Proposed Rule 14.11(i)(4)(C)(v)

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derivatives. See, e.g., Securities Exchange Act Release Nos. 75 FR 13616 (March 22, 2010) (SR-NYSEArca-2010-04) at 13617; and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR-NYSEArca-2012-25) at 32163.

<sup>49</sup> See supra note 40.

<sup>50</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Shares to include OTC derivatives, specifically OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS and therefore would not satisfy the requirements of Rule 14.11(c)(3)(A)(i) or the analogous rule on another listing exchange. See, e.g., Securities Exchange Act Release No. 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR-NYSEArca-2012-108) at 23602.

also provides that the aggregate gross notional value of OTC Derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

Proposed Rule 14.11(i)(4)(C)(vi) provides that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Rule 14.11(i)(4)(C)(i) and 14.11(i)(4)(C)(ii) (including gross notional exposures), respectively. The Exchange notes that, for purposes of this proposal, a portfolio's investment in OTC derivatives will be calculated as the gross notional value of the OTC derivatives.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Fund Shares. Additionally, the Exchange believes that the proposed portfolio standards for listing and trading Managed Fund Shares, many of which track existing Exchange rules relating to Index Fund Shares, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

As an example of how the Exchange would determine whether a series of Managed Fund Shares meets these proposed portfolio exposure requirements, see the following examples based on a hypothetical portfolio. For purposes of these examples, it will be assumed that the portfolio meets proposed Rules 14.11(i)(4)(C)(i)(a)(1), (2), (4), (5), and (6), 14.11(i)(4)(C)(i)(b)(1), (2), (4), and (5), and 14.11(i)(4)(C)(ii)(a), (c), and (d).

Instrument Type	Units	Price (\$)	Market Value	% of Portfolio
U.S. Equity 1	15000	25	375,000	7.50%
U.S. Equity 2	10000	50	500,000	10.00%
U.S. Equity 3	5000	100	500,000	10.00%
U.S. Equity 4	1200	150	180,000	3.60%
U.S. Equity 5	1000	250	250,000	5.00%
Int'l Equity 1	9000	25	225,000	4.50%
Int'l Equity 2	5000	50	250,000	5.00%
Int'l Equity 3	5000	100	500,000	10.00%
Int'l Equity 4	10000	75	750,000	15.00%
Int'l Equity 5	2000	75	150,000	3.00%
Fixed Income 1	5000	25	125,000	2.50%
Fixed Income 2	6400	50	320,000	6.40%
Fixed Income 3 (Private label ABS)	2000	75	150,000	3.00%
TBill 1 (2 months)	12500	50	625,000	12.50%
TBill 2 (6 months)	2000	50	100,000	2.00%
<b>Total Equity</b>			<b>3,680,000</b>	
<b>Total Fixed Income</b>			<b>1,320,000</b>	
<b>Total</b>			<b>5,000,000</b>	<b>100.00%</b>

In this hypothetical portfolio, proposed Rule 14.11(i)(4)(C)(i)(a)(3) is met because the most heavily weighted single U.S. equity component stock (both U.S. Equity 2 and U.S. Equity 3) represents 13.6% of the equity weight of the portfolio ( $500,000/3,680,000$ ) and the five most

heavily weighted U.S. equity component stocks represent 49% of the equity weight of the portfolio (1,805,000/3,680,000) and proposed Rule 14.11(i)(4)(C)(i)(b)(3) is met because the most heavily weighted Non-U.S. Component Stock composes 20.4% of the equity weight of the portfolio (750,000/3,680,000) and the five most heavily weighted Non-U.S. Component Stocks compose 51% of the equity weight of the portfolio (1,875,000/3,680,000). Proposed Rules 14.11(i)(4)(C)(ii)(b) and (e) are met because the most heavily weighted fixed income security (excluding Treasury Securities) represents 24.2% of the fixed income weight of the portfolio (320,000/1,320,000), the five most heavily weighted fixed income securities (excluding Treasury Securities) represent 45% of the fixed income weight of the portfolio (595,000/1,320,000), and the non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components represent 11.4% of the fixed income weight of the portfolio (150,000/1,320,000). For purposes of this analysis, both TBill 1 and TBill 2 will be counted as fixed income securities even though TBill 1 would be included in the definition of cash and cash equivalents. There is no portfolio analysis specific to the cash and cash equivalents portion of the portfolio because there are no limitations to the percentage of the portfolio invested in instruments that qualify as cash and cash equivalents.

Suppose that the hypothetical portfolio laid out above added the following instruments:

Instrument Type	Units of Reference Asset in the Contract(s)	Price or Face Value of Reference Asset	Absolute Notional Exposure	% of Portfolio (including gross notional exposures)
Listed Derivative 1 (Option on U.S. Equity 1)	10,000	20	200,000	3.20%
Listed Derivative 2 (Treasury Futures)	5	100,000	500,000	8.00%
Listed Derivative 3 (Commodity Swap)	200	250	50,000	0.80%
OTC Derivative 1 (Credit Default Swap)	N/A	500,000	500,000	8.00%
<b>Total Derivative</b>			<b>1,250,000</b>	
<b>Listed Derivative</b>			<b>750,000</b>	
<b>Derivative Equity</b>			<b>200,000</b>	
<b>Derivative FI</b>			<b>500,000</b>	
<b>Derivative Other</b>			<b>550,000</b>	
<b>Total Equity</b>			<b>3,880,000</b>	
<b>Total Fixed Income</b>			<b>1,820,000</b>	
<b>Total</b>			<b>6,250,000</b>	

In this hypothetical portfolio, proposed Rule 14.11(i)(4)(C)(vi) provides that the calculations provided above related to Rules 14.11(i)(4)(C)(i) and (ii) would now need to include

the aggregate gross notional value of Listed Derivative 1 and Listed Derivative 2, respectively. As such, the \$200,000 absolute notional exposure from Listed Derivative 1 would be added to the existing exposure to U.S. Equity 1 and proposed Rule 14.11(i)(4)(C)(i)(a)(3) would be met because the most heavily weighted single U.S. equity component stock (now U.S. Equity 1) represents 14.8% of the equity weight of the portfolio ( $575,000/3,880,000$ ) and the five most heavily weighted U.S. equity component stocks represent 51.7% of the equity weight of the portfolio ( $2,005,000/3,880,000$ ). Similarly, proposed Rule 14.11(4)(C)(i)(b)(3) is met because the additional \$500,000 in aggregate gross notional exposure to fixed income securities (in particular, Treasury Securities) gained through Listed Derivative 2 is added included in the calculation such that the most heavily weighted fixed income security (excluding Treasury Securities) represents 17.6% of the fixed income weight of the portfolio ( $320,000/1,820,000$ ), the five most heavily weighted fixed income securities (excluding Treasury Securities) represent 32.7% of the fixed income weight of the portfolio ( $595,000/1,820,000$ ), and the non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components represent 8.2% of the fixed income weight of the portfolio ( $150,000/1,820,000$ ). Proposed Rule 14.11(4)(C)(iv)(a) would be met if both Listed Derivative 1 and Listed Derivative 2 are derivatives for which the Exchange may obtain information via the ISG, from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement [ $((500,000 + 200,000)/750,000) = 93\% > 90\%$ ]. However, if Listed Derivative 1 or Listed Derivative 2 did not meet that requirement, the portfolio would not meet proposed Rule 14.11(4)(C)(iv)(a) [ $((500,000 + 50,000)/750,000) = 73.3\% < 90\%$ ;  $((200,000 + 50,000)/750,000) = 33.3\% < 90\%$ ]. Proposed Rule 14.11(4)(C)(iv)(b) is met because the aggregate gross notional value of listed derivatives is 12% of the portfolio



(750,000/6,250,000), which is less than both standards in the proposed rule. Proposed Rule 14.11(4)(C)(v) would be met because the aggregate gross notional exposure of OTC Derivatives is 8% of the weight of the portfolio (500,000/6,250,000).

In support of this proposal, the Exchange represents that: (1) generically listed Managed Fund Shares will conform to the initial and continued listing criteria under Rule 14.11(i)(4)(A) and (B); (2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares; (3) prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Members in an information circular of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under Rule 3.7, the risks involved in trading the Managed Fund Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated, how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated, prospectus delivery requirements, and other trading information. In addition, the information circular will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m. ET each trading day; and (4) the issuer of a

series of Managed Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under Rule 14.10(c)(3).

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Members or issuers would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>51</sup> in general and Section 6(b)(5) of the Act<sup>52</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than six years under the current process, whereby an exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Managed Fund Shares, the Exchange believes that it is appropriate to codify certain rules within Rule 14.11(i) that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Fund Shares that have investment portfolios that are similar to investment portfolios for Index Fund Shares, which have been approved for listing and trading, thereby creating greater efficiencies in

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<sup>51</sup> 15 U.S.C. 78f.

<sup>52</sup> 15 U.S.C. 78f(b)(5).

the listing process for the Exchange and the Commission. In this regard, the Exchange notes that the standards proposed for Managed Fund Share portfolios that include equity securities, Derivative Securities Products, and Linked Securities are based in large part on the existing equity security standards applicable to Index Fund Shares based on either a U.S. index or portfolio or an international or global index or portfolio found in Rule 14.11(c)(3)(A)(i)<sup>53</sup> and (ii),<sup>54</sup> respectively, and that the standards proposed for Managed Fund Share portfolios that include fixed income securities are based in large part on the existing fixed income standards applicable to Index Fund Shares in 14.11(c)(4). Additionally, many of the standards proposed for other types of holdings of series of Managed Fund Shares are based on previous proposed rule changes for specific series of Managed Fund Shares.<sup>55</sup> The Exchange notes that prior to listing pursuant to proposed amended Rule 14.11(i), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

With respect to the proposed addition to the criteria of Rule 14.11(i)(3)(B) to provide that the website for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable, the Exchange notes that proposed rule changes approved by the Commission for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type

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<sup>53</sup> See supra notes 28 through 32.

<sup>54</sup> See supra notes 33 through 40.

<sup>55</sup> See supra note 23.

of holding.<sup>56</sup> With respect to the proposed exclusion of Derivative Securities Products and Linked Securities from the requirements of proposed Rule 14.11(i)(4)(C)(i)(a) and (b), the Exchange believes it is appropriate to exclude Linked Securities as well as Derivative Securities Products from certain component stock eligibility criteria for Managed Fund Shares in so far as Derivative Securities Products and Linked Securities are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such securities are listed. Derivative Securities Products and Linked Securities that are components of a fund's portfolio would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act<sup>57</sup> or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act<sup>58</sup> or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.<sup>59</sup> The Exchange also notes that Derivative Securities Products and Linked Securities are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the proposed generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio component weighting) applicable to equity securities other than Derivative Securities Products or Linked Securities (e.g., common stocks) to such products.

With respect to the proposed amendment to the continued listing requirement in Rule 14.11(i)(4)(B)(i) to require dissemination of an Intraday Indicative Value at least every 15 seconds during Regular Trading Hours, such requirement conforms to the requirement applicable

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<sup>56</sup> See supra note 21.

<sup>57</sup> 15 U.S.C. 78s(b)(2).

<sup>58</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>59</sup> 17 CFR 240.19b-4(e).

to the dissemination of the Intraday Indicative Value for Index Fund Shares in Rule 14.11(c)(3)(C) and 14.11(c)(6)(A). In addition, such dissemination is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.<sup>60</sup>

As proposed, pursuant to Rule 14.11(i)(4)(C)(ii)(c) an underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers, provided, however, that there would be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities. The Exchange notes that when evaluated in conjunction with proposed Rule 14.11(i)(4)(C)(ii)(b), the proposed rule is consistent with current Rules 14.11(c)(4)(B)(i)(d) and (e) in that it provides for a maximum weighting of a fixed income security in the fixed income portion of the portfolio of a fund that is comparable to the existing rules applicable to Index Fund Shares based on fixed income indexes.

With respect to the proposed amendment to Rule 14.11(i)(4)(C)(iii) relating to cash and cash equivalents, while there is no limitation on the amount of cash and cash equivalents can make up of the portfolio, such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.<sup>61</sup>

With respect to proposed Rule 14.11(i)(4)(C)(iv) relating to listed derivatives, the Exchange believes that it is appropriate that there be no limit to the percentage of a portfolio invested in such holdings, provided that, in the aggregate, at least 90% of the weight of such

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<sup>60</sup> See supra note 23.

<sup>61</sup> See supra note 46.

holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement CSSA, calculated using the aggregate gross notional value of such holdings. Such a requirement would facilitate information sharing among market participants trading shares of a series of Managed Fund Shares as well as futures and options that such series may hold. In addition, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). Such a requirement would act to limit the concentration of any single or group of five or fewer underlying reference assets in the portfolio. In addition, listed swaps would be centrally cleared, reducing counterparty risk and thereby furthering investor protection.<sup>62</sup>

With respect to proposed Rule 14.11(i)(4)(C)(v) relating to OTC derivatives, the Exchange believes that the limitation to 20% of a fund's assets would assure that, to the extent that a fund holds derivatives, the preponderance of fund investments would not be in derivatives that are not listed and centrally cleared. The Exchange believes that such a limitation is sufficient to mitigate the risks associated with price manipulation because a 20% cap on OTC derivatives will ensure that any series of Managed Fund Shares will be sufficiently broad-based in scope to

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<sup>62</sup> The Commission has noted that “[c]entral clearing mitigates counterparty risk among dealers and other institutions by shifting that risk from individual counterparties to [central counterparties (“CCPs”)], thereby protecting CCPs from each other’s potential failures.” See Securities Exchange Act Release No. 67286 (June 28, 2012) (File No. S7-44-10) (Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies).

minimize potential manipulation associated with OTC derivatives because the remaining 80% of the portfolio will consist of instruments subject to numerous restrictions designed to prevent manipulation, including equity securities (which, as proposed, would be subject to market cap, trading volume, and diversity requirements, among others), fixed income securities (which, as proposed, would be subject to principal amount outstanding, diversity, and issuer requirements, among others), cash and cash equivalents (which, as proposed, would be limited to short-term, highly liquid, and high credit quality instruments), and/or listed derivatives (which, as proposed, 90% of the weight of futures and options will be futures and options whose principal market is a member of ISG). With respect to proposed Rule 14.11(i)(4)(C)(vi) related to a fund's use of listed or OTC derivatives to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the Exchange notes that such exposure would be required to meet the numerical and other criteria set forth in proposed Rule 14.11(i)(4)(C)(i) and 14.11(i)(4)(C)(ii), respectively.

Quotation and other market information relating to listed futures and options is available from the exchanges listing such instruments as well as from market data vendors. With respect to centrally-cleared swaps<sup>63</sup> and non-centrally-cleared swaps regulated by the Commodity Futures Trading Commission (the "CFTC"),<sup>64</sup> the Dodd-Frank Act mandates that swap information be reported to swap data repositories ("SDRs").<sup>65</sup> SDRs provide a central facility for swap data

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<sup>63</sup> There are currently five categories of swaps eligible for central clearing: interest rate swaps; credit default swaps; foreign exchange swaps; equity swaps; and commodity swaps. The following entities provide central clearing for OTC derivatives: ICE Clear Credit (U.S.); ICE Clear (E.U.); CME Group; LCH.Clearnet; and Eurex.

<sup>64</sup> Pursuant to the Dodd-Frank Act, OTC and centrally-cleared swaps are regulated by the CFTC with the exception of security-based swaps, which are regulated by the Commission.

<sup>65</sup> The following entities are provisionally registered with the CFTC as SDRs: BSDR LLC, Chicago Mercantile Exchange, Inc., DTCC Data Repository, and ICE Trade Vault.

reporting and recordkeeping and are required to comply with data standards set by the CFTC, including real-time public reporting of swap transaction data to a derivatives clearing organization or SEF.<sup>66</sup> SDRs require real-time reporting of all OTC and centrally cleared derivatives, including public reporting of the swap price and size. The parties responsible for reporting swaps information are CFTC-registered swap dealers (“RSDs”), major swap participants, and SEFs. If swap counterparties do not fall into the above categories, then one of the parties to the swap must report the trade to the SDR. Cleared swaps regulated by the CFTC must be executed on a Designated Contract Market (“DCM”) or SEF. Such cleared swaps have the same reporting requirements as futures, including end-of-day price, volume, and open interest. CFTC swaps reporting requirements require public dissemination of, among other items, product ID (if available); asset class; underlying reference asset, reference issuer, or reference index; termination date; date and time of execution; price, including currency; notional amounts, including currency; whether direct or indirect counterparties include an RSD; whether cleared or un-cleared; and platform ID of where the contract was executed (if applicable).

With respect to security-based swaps regulated by the Commission, the Commission has adopted Regulation SBSR under the Act implementing requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR provides for the reporting of security-based swap information to registered security-based swap data repositories (“Registered SDRs”) or the Commission, and

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<sup>66</sup> Approximately 21 entities are currently temporarily registered with the CFTC as SEFs.



the public dissemination of security-based swap transaction, volume, and pricing information by Registered SDRs.<sup>67</sup>

Price information relating to forwards and OTC options will be available from major market data vendors.

The Exchange notes that a fund's investments in derivative instruments would be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company can obtain. A fund's investments would be consistent with its investment objective and would not be used to enhance leverage. To limit the potential risk associated with a fund's use of derivatives, a fund will segregate or " earmark " assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. A fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2xs or 3xs) of a fund's broad-based securities market index (as defined in Form N-1A).<sup>68</sup>

The proposed rule change is also designed to protect investors and the public interest because Managed Fund Shares listed and traded pursuant to Rule 14.11(i), including pursuant to the proposed new portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange, as further described in the Approval Order.

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<sup>67</sup> See Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information).

<sup>68</sup> See, e.g., Securities Exchange Act Release No. 7482 (April 29, 2015), 86 FR 25723 (May 5, 2015) (SR-NYSEArca-2014-89) (order approving listing and trading of shares of eight PIMCO exchange-traded funds).

The proposed rule change is also designed to protect investors and the public interest as well as to promote just and equitable principles of trade in that any Non-U.S. Component Stocks will each meet the following criteria initially and on a continuing basis: (1) have a minimum market value of at least \$100 million; (2) have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (3) most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; and (4) each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting. The Exchange believes that such quantitative criteria are sufficient to mitigate any concerns that may arise on the basis of a series of Managed Fund Shares potentially holding 100% of its assets in Non-U.S. Component Stocks that are neither listed on members of ISG nor exchanges with which the Exchange has in place a CSSA because, as stated above, such criteria are either the same or more stringent than the portfolio requirements for Index Fund Shares that hold Non-U.S. Component Stocks and there are no such requirements related to such securities being listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA. Further, the Exchange has not encountered and is not aware of any instances of manipulation or other negative impact in any series of Index Fund Shares that has occurred by virtue of the Index Fund Shares holding such Non-U.S. Component Stocks. As such, the Exchange believes that there should be no difference in the portfolio requirements for Managed Fund Shares and Index Fund Shares as it relates to holding Non-U.S. Component Stocks that are not listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Fund Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 14.11(i). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares and their underlying components with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA. In addition, the Exchange or FINRA on behalf of the Exchange may obtain information regarding trading in Managed Fund Shares and their underlying components from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by allowing Managed Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the additional criteria described above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Fund Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Fund Shares more competitive by applying uniform listing standards with respect to Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

IV. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 5 Thereto, and Timing for Commission Action

Section 19(b)(2) of the Act<sup>69</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines

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<sup>69</sup> 15 U.S.C. 78s(b)(2).

that a longer period is appropriate and publishes the reasons for such determination. The Commission determined that it was appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.<sup>70</sup> Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>71</sup> designated July 22, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 5 thereto (File No. SR-BATS-2015-100).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 5 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-100 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>70</sup> See supra note 13 and accompanying text.

<sup>71</sup> 15 U.S.C. 78s(b)(2).

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-100 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

Robert W. Errett  
Deputy Secretary

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<sup>72</sup> 17 CFR 200.30-3(a)(12).

